



# Handicapped Workers

UNDER THE

# Wage AND Hour Law

# **HANDICAPPED WORKERS**

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### **The Wage and Hour Law Says . . .**

The Fair Labor Standards Act (United States Wage and Hour Law) sets a ceiling over hours and a floor under wages for workers engaged in interstate commerce or in the production of goods for interstate commerce. These workers must be paid at least 30 cents an hour.<sup>1</sup> They must also receive at least time and a half their regular rate of pay for all hours worked over 40 in any one week.<sup>2</sup>

Physically and mentally handicapped and aged persons are generally at a disadvantage when competing with the able-bodied for jobs. Congress recognized these inequalities in workers and provided for their employment at wages lower than the minimum rates set in the act. The purpose of this exemption is to safeguard the handicapped worker in his job and to see that his employment opportunities are not curtailed.

In order to protect the handicapped worker from exploitation by unscrupulous employers, the act provides that no handicapped worker may be employed at less than the minimum wage unless he has received a certificate from the Wage and Hour Division. Such certificates are granted in accordance with regulations issued by the Administrator. The purpose of this leaflet is to explain these regulations.

### **What Is a Handicapped Worker?**

In each case it is necessary to establish the fact that the worker's earning capacity is materially lowered by advanced age or by physical or mental deficiency or injury. Whether the worker's defect in fact makes him a handicapped worker depends upon what type of work he has to do, the relation of the handicap to that work, the worker's general health, activity and the ease with which he performs his work, freedom from worry as to security in his job and strains involved in competing with nonhandicapped employees for production volume. No worker will be certified as handicapped unless his earning capacity is impaired for his specific job, and unless he is unable to earn the statutory minimum. No worker will be certified as handicapped merely because he is inexperienced. A worker who is found to be handicapped for employment as a truck driver might not be considered handicapped for employment as a timekeeper.

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<sup>1</sup> Forty cents an hour after October 24, 1945, unless previously raised to between 30 and 40 cents by a wage order.

<sup>2</sup> Over 44 hours from October 24, 1938, to October 24, 1939. Over 42 hours from October 24, 1939, to October 24, 1940.

## How to Apply For Certificates

(1) Any employer may make application for a certificate for a worker who he believes is handicapped.

(2) Separate application must be made for each such worker.

(3) The application must be submitted on a special form, obtainable from the nearest Wage and Hour office, a list of which will be found on page 4.

(4) The application must be signed by both the employer and the employee.

(5) In filling in the application, the employer must set forth facts proving the following:

(a) That the worker is handicapped. Descriptions of alleged handicaps must be in *detail*. Vague descriptions, such as "nervous condition," "physically incapacitated," etc., will not suffice. In all doubtful cases a medical certificate should accompany the application.

(b) That the handicap has impaired the worker's earning capacity for the specific employment in which he is to be engaged.

(c) That employment at wages lower than the minimum is necessary to prevent curtailment of the worker's employment opportunities.

## What the Division Does

(1) Whenever it is deemed necessary, the Division may make an investigation and require the worker to take a medical examination.

(2) As a general rule, no certificate will be issued which fails to give substantial and sufficient evidence as indicated in paragraph 5 above. No certificate will be granted:

(a) For a worker with temporary disabilities;

(b) For a worker alleged to be slow or inexperienced, unless his earning capacity also is impaired by age, physical or mental deficiency, or injury;

(c) For a worker, irrespective of handicap, whose piecework earnings are generally equal to or above the statutory minimum.

## What the Certificate Allows

If the applicant is, in fact, found to be handicapped, a special certificate is issued to the employer permitting the employment of the handicapped worker at a rate less than the statutory minimum.

One copy of the certificate will be given the handicapped worker, and one copy to the employer to be kept on file in the same place at which the worker's employment records are maintained.

The terms of the certificate specify the wage rate to be paid the handicapped worker and the period during which this rate will be applicable.

No employer may pay the handicapped worker at a rate less than that set in the certificate. If nonhandicapped workers in the same occupation are paid on a piece-rate basis, the handicapped worker must be paid the same piece rate and shall receive whatever he earns above the rate fixed in the certificate. Handicapped workers are not exempted from the hour provisions of the act.





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## Review and Cancellation

A certificate will be null and void if any information presented in the application is found to be fraudulent.

A certificate may be affirmed, revised, or revoked by the Division upon the submission of additional material facts. Any interested person can ask the Wage and Hours Office to change its action.

The granting or denying of a special certificate is subject to review, which any aggrieved person may request by filing a petition within 15 days after publication of the Division's action.

## For Further Information

A copy of the regulations and more detailed explanation of this provision of the act may be obtained upon request from the Wage and Hour Division, United States Department of Labor, Washington, D. C., or from the nearest field office, a list of which will be found below.

### WAGE AND HOUR FIELD OFFICES

- Atlanta, Ga.*—Witt Bldg., 249 Peach-tree St.  
*Baltimore, Md.*—606 Snow Bldg.  
*Birmingham, Ala.*—1007 Comer Bldg., 2d Ave. & 21st St.  
*Boston, Mass.*—304 Walker Bldg., 120 Boylston St.  
*Buffalo, N. Y.*—Pearl & Swan Sts.  
*Charleston, W. Va.*—805 Peoples Bldg.  
*Charlotte, N. C.*—221 Post Office Bldg.  
*Chicago, Ill.*—1200 Merchandise Mart, 222 West North Bank Drive.  
*Cincinnati, Ohio*—1312 Traction Bldg.  
*Cleveland, Ohio*—728 Standard Bldg., 1370 Ontario St.  
*Columbia, S. C.*—Federal Land Bank Bldg., Hampton & Marion Sts.  
*Columbus, Ohio*—211 Rowlands Bldg.  
*Dallas, Tex.*—824 Santa Fe Bldg., 1114 Commerce St.  
*Denver, Colo.*—300 Chamber of Commerce Bldg.  
*Des Moines, Iowa.*—227 Old Federal Bldg.  
*Detroit, Mich.*—348 Federal Bldg.  
*Honolulu, T. H.*—345 Federal Bldg.  
*Houston, Tex.*—605 Federal Office Bldg.  
*Indianapolis, Ind.*—108 E. Washington St.  
*Jackson, Miss.*—402 Deposit Guaranty Bank Bldg.  
*Jacksonville, Fla.*—456 New Post Office Bldg.  
*Kansas City, Mo.*—504 Title & Trust Bldg., 10th & Walnut Sts.  
*Little Rock, Ark.*—333 State Capitol Bldg.  
*Los Angeles, Calif.*—417 H. W. Hellman Bldg.  
*Louisville, Ky.*—1106 Republic Blvd.  
*Manchester, N. H.*—227 Post Office Bldg.  
*Milwaukee, Wis.*—298 Federal Bldg.  
*Minneapolis, Minn.*—406 Pence Bldg., 730 Hennepin Ave.  
*Nashville, Tenn.*—Medical Arts Bldg., 119 7th Ave. North.  
*Newark, N. J.*—1004 Kinney Bldg., 790 Broad St.  
*New Orleans, La.*—1512 Pere Marquette Bldg.  
*New York, N. Y.*—30th St. & 9th Ave., Parcel Post Bldg.  
*Oklahoma City, Okla.*—523 Federal Bldg.  
*Pawtucket, R. I.*—214 Post Office Bldg.  
*Peoria, Ill.*—342 Post Office Bldg.  
*Philadelphia, Pa.*—1216 Widener Bldg., Chestnut & Juniper Sts.  
*Pittsburgh, Pa.*—219 Old Post Office Bldg.  
*Portland, Maine.*—309 Federal Bldg., 76 Pearl St.  
*Portland, Ore.*—315 Customhouse.  
*Raleigh, N. C.*—507 Raleigh Bldg., Hargett & Fayetteville Sts.  
*Richmond, Va.*—215 Richmond Trust Bldg., 627 East Main St.  
*Salt Lake City, Utah.*—207 Boston Bldg.  
*San Antonio, Tex.*—583 Federal Bldg.  
*San Francisco, Calif.*—785 Market St.  
*San Juan, Puerto Rico.*—Box 112 Post Office.  
*Seattle, Wash.*—305 Post Office Bldg.  
*Spokane, Wash.*—228 Hutton Bldg.  
*St. Louis, Mo.*—100 Old Federal Bldg.  
*St. Paul, Minn.*—137 State Office Bldg.  
*Worcester, Mass.*—503 Federal Bldg.